IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: O R D E R ::

D.B. CIVIL REVIEW PETITION NO.92/2007

Tafzil Ahmed
Vs.
Rajasthan Housing Board & Ors.

D.B. CIVIL REVIEW PETITION NO.93/2007

Kailash Narayan Mathur & Anr.
Vs.
Rajasthan Housing Board & Ors.

Date of Order : 26/10/2007.

P R E S E N T

HON'BLE THE CHIEF JUSTICE MR. J.M. PANCHAL
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr.Mahendra Singh for the petitioners.

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These two review petitions have been filed with a prayer that the judgment dated 25.5.2007 decided by a common order whereby seven identical

matters were decided in so far as it has allowed D.B. Civil Special Appeal (W) No.689/196 Ramesh Chand Jain & Ors. Vs. Rajasthan Housing Board may be reviewed and recalled and the said appeal may kindly be ordered to be dismissed with the clarification that the petitioners having been substantively appointed as Project Engineer (Junior) on May 21, 1987 and having been regularly promoted through DPC on November 21, 1987 cannot be treated as junior to those who were subsequently appointed.

We have heard Shri Mahendra Singh, the learned counsel for the petitioners and perused the judgments sought to be reviewed and other material on record.

The factual matrix which gave rise to these review petitions is that

the petitioners were appointed on ad hoc temporary basis as Project Engineer (Junior) with a condition that they shall be confirmed if their work is found satisfactory. On being found suitable by the screening committee they were made substantive in service by order of the Rajasthan Housing Board (‘the Board’, for short) on May 19, 1987. Within six months of their being substantive, the petitioners and other similarly situated Project Engineers (Junior) who were eleven in number, promoted to the post of Project Engineer (Senior) through DPC, and simultaneously, twenty five Project Engineers (Junior) were appointed by way of direct recruitment on May 24, 1987. The appeal in which the judgment sought to be reviewed, was filed by five persons who were appointed as

Project Engineer (Junior) by due process of selection as direct recruits vide order dated March 27, 1989, and having completed more than five years of experience on the post of Project Engineer (Senior), they became eligible for promotion to the post of Resident Engineer; they in the year 1996 filed writ petition with the prayer that the respondent-Board be directed to correctly determine seniority of the incumbents working in the feeder cadre of Project Engineer (Senior) as per regulation 11 of the Rajasthan Housing Board Employees (Conditions of Recruitment and Promotions) Regulations, 1976 (‘the Regulations of 1976’, for short) read with the provisions contained in Schedule Technical appended thereto, especially, clause (3)(d). Since the

petitioners were allegedly appointed by so-called backdoor entry, have already been regularized in 1987, they have become members of service, and therefore, will fall within the zone of consideration for promotion to the post of Resident Engineer. However, as per the contents of the order of the learned Single Judge, it appears that the said writ petition was filed on the basis of the judgment rendered by this Court in SBCWP no.7477/1992 decided on July 07, 1993. The writ petition No.7477/1992 was filed by K.K. Dixit & Ors. who were Project Engineers (Junior) degree holders challenging the action of the respondent-Board. As per the relevant rules, they were required possess only three years' of experience in service to be eligible for promotion while degree holders need to possess

seven years' total experience of service for the purpose. K.K. Dixit & others questioned the action of the respondent-Board in seeking to found the experience of such of the diploma holders who subsequently acquired degree anterior to the period of their acquiring such degree and also contended that such Project Engineer (Junior) diploma holders who were initially appointed on ad hoc temporary basis merely on the basis of stay application without advertising vacancies and inviting applications first to grant opportunity to all eligible candidates and were subsequently regularized in service by way of screening should not be allowed the benefit of seniority for the period they were serving merely on ad hoc basis and such period shall also not be

counted for the purpose of experience and such period also cannot be counted because they were not had by them not become member of service. Such period also cannot be counted for the purpose of experience. The learned Single Judge while upholding the aforesaid contention allowed the writ petition holding that the period of service rendered by such employee on ad hoc basis cannot be taken into consideration for the purpose of experience for eligibility for promotion to the post of Project Engineer (Senior) and that only the period of service rendered by them after being screened and regularized shall be countable for the purpose. Subsequently, a review petition was filed by the original petitioners for direction to prepare separate seniority

list for degree holders and diploma holders. The learned Single Judge allowed the review petition with the direction that separate seniority list shall be accordingly prepared and such of the Project Engineers (Junior) who acquired the qualification of AME shall be placed lowest in that year in the seniority list of Project Engineer (Junior) degree holders.

Appeal no.64/1993 decided by a common judgment dated May 25, 2007 and the appeal no.67/1993 was filed against the judgment dated September 21, 1993 while appeal no.528/1993 was filed against the judgment dated July 7,1993 allowing the writ petition. Two appeal no.s 64/1993 and 67/1993 were preferred against the judgment dated September 21, 1993 alongwith the review petition. The appeal no.528/1993 was admitted to

hearing by this Court vide order dated October 29, 1993. All the aforesaid appeals were admitted to hearing by this Court vide order dated October 29, 1993. The argument advanced in writ petition no.3317/1993 was that experience gained by the respondents was not countable to make them eligible for promotion. Satyaveer Singh filed writ petition no.20/1993 with the prayer that the period of service rendered by him prior be treated valid for the purpose of experience making him eligible for promotion to the post of Project Engineer (Senior) and a direction to be issued to promote him from the date persons junior to him were promoted because experience gained by him even on ad hoc basis was liable to be counted as valid experience. Writ Petition no.7063/1993 was filed by

Ranjeet Singh Godara and another challenging the validity of clause (3) (d) of the note below Schedule Technical appended to the Regulations of 1976 which inter alia provides that the persons appointed under the process of screening shall rank junior to those appointed in accordance with the prescribed manner as per Rajasthan Housing Board Rules. It is in this context that we have appreciated all arguments advanced by Shri Mahendra Singh, the learned counsel for the petitioners.

Shri Mahendra Singh, the learned counsel for the petitioner has argued that the appellants of appeal no.689/1996 were appointed as Project Engineer (Junior) by way of direct recruitment vide order dated March 27, 1989 and were thus born two years after

regular promotion granted to the petitioners as Project Engineer (Senior). In the writ petition filed by them, the only relief which was sought that the respondent-Board be directed to publish final seniority list of Project Engineer (Senior) in accordance with the rules and quota and they be declared senior to all the candidates who were appointed as Project Engineer (Junior) by screening. Besides the fact that the petitioners were not impleaded as respondents in the aforesaid writ petition, all other who were screened were not impleaded as respondents. As is evident from the order dated November 21, 1987 whereby 11 persons were promoted as Project Engineer (Senior) and wrongly described the order of promotion as the order of screening. This according to Shri

Mahendra Singh, the learned counsel for the petitioner is an error apparent on the face of record so as to justify review or recall of the judgment. It was further argued that one of the petitioners Tafzil Ahmed was not impleaded nor did he file any application for impleadment and, therefore, the judgment in question has come to even as surprise. It was further argued that while allowing the said appeal, the respondents were directed to take steps for redetermination of seniority and to undertake the exercise for consideration of concerned persons for promotion by convening DPC/Review DPC. Now the respondent-Board has initiated action to give effect to that direction and thus jeopardizing the interest of the petitioners. All the

aforesaid arguments were not specifically dealt with in the judgment even if they were raised at the time of hearing and therefore, the same constitute errors apparent on the face of record and justify review and recall of the judgment. It was argued that the view taken in the judgment to the effect that experience gained prior to the screening cannot be taken into consideration has the effect of rendering the expression “total experience of service” as redundant and otiose. As has been repeatedly held by the Hon’ble Supreme Court, the concept of “experience” is distinguishable from the concept of “seniority”. Besides, it has been the consistent practice of the Board to take into consideration the entire experience of a person on the feeder post. As a result of the

aforesaid direction, the petitioners are being allowed to be placed even below those who were appointed by way of direct recruitment on the post of Project Engineer (Junior) subsequent to their appointment. Learned counsel for the petitioners has relied upon the judgments of Hon’ble Supreme Court in Narendra Singh Vs. State of Haryana, 2006(8) SCC 33, Commissioner of Customs, Kolkata Vs. Peerless Consultancy Service Pvt. Ltd., 2007 (5) SCC 735, Union of India Vs. R. Bhusal 2006(6) SCC36 B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. 2006 (11) SCC 548, Bombay Dyeing and Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors. 2006 (3) SCC 434, P.S. Sadashiv Swamy Vs. State of TN 1976(1) SLR 53, S.B. Mathur Vs. Hon’ble Chief Justice, Delhi High

Court 1988 SC 2073, U.P. Jal Nigam Vs. Jaswant Singh 2006 (11) SCC 464, Government of Maharashtra Vs. Deokar Distillery 2003(5) SCC 69 and Uttaranchal Forest Rangers Association Vs. State of UP 2006(10) SCC 346.

The judgment of which review is sought for was in fact decided not only the appeal but also six cognate matters involving common question of law and fact and, therefore, were ordered to be grouped together by different orders passed by different Benches of this Court. In order to appreciate the background in which different petitions leading to decision of interpretation of the relevant rules and introduction of clause (9) and (10) of the Regulations of 1976 and Schedule Technical appended thereto as also note given below on the question

whether those appointed on stay application without being subjected to any acceptable board of recruitment if and when regularized by way of screening would be entitled to count period of service rendered by them on ad hoc temporary basis not only for the purpose of experience to make them eligible for promotion but also for seniority. The contention that even though this court while accepting the application of the petitioners, directed their impleadment, and yet the appellant failed to make any corresponding amendment in the cause title of the appeal and, therefore, impugned judgment does not deserve acceptance because by order dated August 30, 1996, this Court had allowed two applications for impleadment. One of the applications was filed by Dinesh

Sharma and O.P. Sharma and another application by Sarvesh Sharma and K.N. Mathur. While those impleaded on the basis of first application was very much represented before the Court at the time of hearing and in fact advanced the very same arguments which the petitioners are seeking to make, petitioners K.N. Mathur and Sarvesh Sharma chose not to appear before the Court. Mere non filing of the amended cause title by the appellant cannot have the effect of undoing a judicial order passed by the Court on August 20, 1996 and on that basis cannot be permitted to built the argument because of that reason they remained unimpleaded and outside the arena of parties. The argument of Hussain for his non-impleadment however need to be appreciated in the context and scenario

of the controversy not only the petitioners K.N. Mathur and Sarvesh Sharma were aware of the proceedings but were permitted to be impleaded as respondents, three others were impleaded and in fact were duly represented by their advocate. Besides the controversy whether the validity of clause (3)(d) of the Schedule Technical appended to the Regulations of 1976 was under challenge and the argument for and against were made by the contesting parties on the question whether those appointed on the basis of stay applications are on ad hoc basis shall be entitled to count the period of service for the purpose of experience as also seniority so as to make them eligible for promotion. In fact in the writ petition filed by Ranjeet Singh Godara in 1993 which was one of the

matters decided by the common judgment, in para 11 and 12 of the reply filed by the respondents no.6 and 7 thereto a specific contention that reference to eight persons six of whom were those impleaded as respondents by the order of this Court for they were now not only regularized and even if before they could complete the requisite period of probation. This being the controversy pertaining to the appointment. The question of seniority and experience on the post of Project Engineer (Junior) who were regularized by way of screening, having conducted by the respondent Board being the cadre of Project Engineer (Junior) and Project Engineer (Senior) in the respondent Board not being confined o the service of the Board alone, every

member of the cadre was aware of the controversy.

What was decided in the writ petition was not about the validity of the promotion of the petitioners or the others in the cadre which although was noticed but merely about interpretation of the relevant rules. Argument advanced on behalf of the petitioners that there was delay in filing of the writ petition while petitioners were promoted on November 21, 1987 the appellants who filed the writ petition directly recruited with the same condition, therefore, could not challenge their promotion as they have no locus standi to challenge their promotion. The writ petition itself having been filed in the year 1996 was liable to be rejected as the same suffers from delay and latches. The

basic contention of the original petitioners is that they have completed five years' experience on the post of Project Engineer (Senior) and became eligible for promotion to the post of Resident Engineer and, therefore, they filed the writ petition with the prayer that seniority in the cadre of Project Engineer (Senior) should be correctly determined and in accordance with the rule and quota prescribed. But in addition to that the question of seniority and experience of those who had been appointed on the basis of stay application directly without any procedure under the law was already under examination in other cognate matters. First of which being writ petition no.7477/1992 field by K.K. Dixit and eight others way back in the year 1992. Moreover the writ petition

in the present matter was decided by he learned Single Judge on merits and no argument with regard to delay was raised there in the applications for impleadment. In para 3 of the application filed by S.P. Mathur, Dinesh Chand and O.P. Mathur, it has been contended that though no common order of their imleadment as party respondents was passed in the writ petition but they were merely given a chance of hearing by the learned Single Judge.

In this scenario when the judgment is under challenge when there was no objection of delay raised before the learned Single Judge in the judgment which was impugned in appeal and the appeal having been admitted almost more than a decade ago, hearing, dismissal of appeal/appeals on the

ground of delay and latches and not examining issues rather than examining issues involved, could not have been proper exercise of jurisdiction.

In the written argument, it has been advanced that the view taken by this Court in the impugned judgment that the experience gained cannot be considered as valid for eligibility of promotion has the effect of rendering the total experience in service as redundant. Such an argument is not available to be made in the Court. As informed by the learned counsel for the petitioner in the course of hearing that special leave to petition is already preferred against the judgment in question in which notices have been issued therefore we would refrain from expressing out opinion on one or the other arguments advanced which in any

case would be available to the petitioners.

Their Lordships of the Supreme Court in B. Prabhakar Rao and Others Vs. State of AP & others 1985(Supp.) SCC 432, dealing with the similar objection of non-joinder held that even if some of the affected parties have not been impleaded, their interest are identical with those who have been sufficiently and well represented and not against any individual party ?

The points in special appeal and other cognate mattes are inter woven and the determination of those questions could not have been withheld for mere reason of non-impleadment of the promotees.

In V.P. Shrivastava Vs. State of M.P. (1996) 7 SCC 759 while dealing with somewhat or similar objection in a

petition filed at the instance of direct recruits challenging the principles for determination applied by the State assigning higher seniority to ad hoc promotees, it was held that the impleadment of the State was sufficient and non-impleadment of all the promotees, particularly when the Tribunal found that impleadment of two of the promotees had safeguarded the interest of all the promotees.

We have respectfully considered the plethora of the judgments cited and studied the same. In our humble opinion, in view of the peculiar facts and circumstances of the case, the principles of law laid down therein would not be applicable to the facts of the present case.

In the circumstances, we do not find any merit in these review

petitions, which are accordingly dismissed.

(MOHAMMAD RAFIQ), J. (J.M. PANCHAL), CJ.

Skant/-